

21 C.J.S. Courts § 116

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Courts

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III. Creation and Constitution; Officers of Courts

A. Creation, Organization, and Abolition of Courts

2. Exercise and Delegation of Power

§ 116. Effect of exercise of power

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The effect of an exercise of the power to create, abolish, reorganize, consolidate, or transfer the jurisdiction of a court depends on the intent expressed in the constitutional or statutory provision exercising such power.

A proper and lawful exercise of delegated legislative authority, or the direct exercise of constitutional power, will operate to abolish a court or not, according to the intent expressed or lawfully to be implied.¹ This intent governs in determining the effect of the adoption of a new constitution; of the creation, alteration, and reorganization of new districts, circuits, or other judicial subdivisions; and of the detaching, attaching, annexation, and consolidation of districts and the transfer of jurisdiction in general.²

The usual rules as to the construction of statutes apply to statutes of this character.³ Such a statute should be construed as a whole.⁴

Statutes conferring additional power on courts should be liberally construed,⁵ and any doubt that exists as to whether jurisdiction of a court arises under a new statute ordinarily should be resolved in favor of jurisdiction.⁶ However, it has been held that a grant of jurisdiction to an inferior court, which jurisdiction formerly resided in the court to which appeals from the inferior court may be taken, must be strictly construed.⁷

Unless the intent to do so is apparent,⁸ the jurisdiction of a court is rarely deemed to be taken away by implication.⁹ However, the affirmative description of cases in which jurisdiction may be exercised implies a negative on the exercise of such power in other cases.¹⁰

The giving of additional jurisdiction to other courts has been held not to take general jurisdiction thereover away from a constitutional court of general jurisdiction.¹¹ However, it has also been held that a statute conferring special jurisdiction on another court deprives a court of general jurisdiction of its jurisdiction over such subject matter.¹²

Where a court is created to exercise the jurisdiction of other courts, it assumes the same characteristics as respects to whether it exercises essentially state or county functions.¹³

Judges.

The power to create a court ordinarily implies the power to create the office of judge thereof and to confer jurisdiction.¹⁴

If a court is properly abolished by the legislature, the term of one holding the office of judge of the court is terminated as there can be no incumbent without an office.¹⁵

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Footnotes

¹ Ariz.—*Sanders v. Sanders*, 52 Ariz. 156, 79 P.2d 523 (1938).

² Ariz.—*Sanders v. Sanders*, 52 Ariz. 156, 79 P.2d 523 (1938).

Abolition of court

The enactment of a section of a state constitution which vested judicial power of the state exclusively in certain enumerated courts and which did not list small claims courts, and which provided that small claims courts operating from the effective date of the constitution would be reclassified as magistrate courts, had the effect of abolishing a county small claims court that had previously been established by the statute.

Ga.—*Porter v. Calhoun County Bd. of Com'rs*, 252 Ga. 446, 314 S.E.2d 649 (1984).

Merger of courts

The fact that the state constitution provides that the judges of probate of wills, and for granting letters of administration, shall hold their courts at such time or places, on fixed days, as the convenience of the people shall require would not preclude the legislature from merging probate courts into the superior court.

Mass.—*Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652 (1977).

3 Cal.—*Hopkins v. Anderson*, 218 Cal. 62, 21 P.2d 560 (1933).

N.C.—*Coffey v. Rader*, 182 N.C. 689, 110 S.E. 106 (1921).

As to the general rules regarding construction of statutes, see C.J.S., *Statutes* §§ 364 to 394.

4 Tex.—*Acree v. State*, 47 S.W.2d 907 (Tex. Civ. App. Waco 1932), writ dismissed w.o.j., (July 6, 1932).

5 Cal.—*Gallagher v. Campodonico*, 121 Cal. App. Supp. 765, 5 P.2d 486 (App. Dep't Super. Ct. 1931).

6 Cal.—*Gallagher v. Campodonico*, 121 Cal. App. Supp. 765, 5 P.2d 486 (App. Dep't Super. Ct. 1931).

7 Cal.—*People v. Denault*, 81 Cal. App. 1, 253 P. 151 (2d Dist. 1927).

8 Ill.—*White v. City of Ottawa*, 318 Ill. 463, 149 N.E. 521 (1925).

9 Ind.—*Gibson v. State*, 99 Ind. App. 106, 188 N.E. 803 (1934).

Presumption against divestiture

Ala.—*Thomas v. Liberty Nat. Life Ins. Co.*, 368 So. 2d 254 (Ala. 1979).

10 Mich.—*Luyk v. Hertel*, 242 Mich. 445, 219 N.W. 721 (1928).

11 N.Y.—*In re Malloy's Estate*, 278 N.Y. 429, 17 N.E.2d 108 (1938).

12 Tex.—*Wilson v. Donna Irr. Dist. No. 1, Hidalgo County*, 8 S.W.2d 187 (Tex. Civ. App. San Antonio 1928), writ refused, (Jan. 30, 1929).

13 Tenn.—*Hancock v. Davidson County*, 171 Tenn. 420, 104 S.W.2d 824 (1937).

14 Fla.—*State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928).

15 Ohio—*Geisinger v. Cook*, 52 Ohio St. 2d 51, 6 Ohio Op. 3d 191, 369 N.E.2d 477 (1977).